

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Western Wireless Corporation)
)
Petition for Designation as an)
Eligible Telecommunications Carrier)
And For Related Waivers to Provide Universal)
Service to the Crow Reservation in Montana)

CC Docket No. 96-45
DA 99-1847

**REPLY COMMENTS OF PROJECT TELEPHONE COMPANY, INC.
AND RANGE TELEPHONE COOPERATIVE, INC.**

Project Telephone Company, Inc. (Project), and Range Telephone Cooperative, Inc. (Range), incumbent Rural Telephone Companies serving the Crow Reservation, by their attorney, file these Reply Comments in response to Comments of other parties filed October 12, 1999. The initial comments of Project and Range demonstrated that the low level of subscribership on the Reservation is a result of adverse economic conditions, that service is readily available to substantially all residents in their service areas at reasonable rates, that petitioner Western Wireless (WW) has not shown that this Commission has jurisdiction to act on its Petition, and that the waiver requests were unjustified.

In their initial Comments, Project and Range explained that the WW petition for designation as an Eligible Telecommunications Carrier (ETC) cannot be considered unless the

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Commission's jurisdiction is established under Section 214(e)(6).¹ That Section requires a finding that the state commission, The Montana Public Service Commission (Montana PSC), does not have jurisdiction to grant ETC designation. The comments of the Montana PSC specifically state that it intends to proceed with consideration of the WW petition before it, which requests ETC designation for a service area including the Crow Reservation.² The comments of the Rural Telephone Coalition, Bell South and U S West also point out that WW has not established the necessary basis for FCC jurisdiction.³

The Cellular Telecommunications Industry Association (CTIA), however, claims the Commission does have jurisdiction to consider the petition under both Sections 214(e)(3) and 214(e)(6).⁴ CTIA's assertion of Section 214(e)(3) jurisdiction apparently proceeds from its acceptance of the erroneous claim in WW's petition that only 45% of the households on the Reservation have access to telephone service. CTIA then relies on this mistaken factual claim to conclude that the Reservation is "unserved" within the meaning of Section 214(e)(3).⁵

¹ Project and Range at 10-24.

² Montana PSC at 2.

³ Rural Telephone Coalition at 7-12; Bell South at 3-4; U S West at 2-4 (noting that the statute's intent is not to provide an opportunity for forum shopping).

⁴ CTIA at 3.

⁵ CTIA at 4. CTIA claims without support that "many Indian reservations are unserved areas because few, if any, common carriers will provide basic telephone services." Project and Range do, as demonstrated in their comments, offer the supported services throughout their service areas on the Crow Reservation. Whether other Indian reservations are served or unserved is irrelevant to this proceeding.

Project and Range demonstrated in their comments that service is, in fact, *available*, to virtually any household that requests it, and that the percentage of households subscribing to service is substantially above the WW claim. The severe economic conditions on the Reservation are the cause of a penetration rate that is well below the national average, but that fact provides no basis for a finding under Section 214(e)(3) that “no common carrier will provide the services that are supported....”⁶ Project and Range documented that they do and will provide the service and have worked hard to promote subscribership.⁷ There is thus no basis whatever for CTIA’s statement that “failure to grant ETC status to Western Wireless would effectively maintain the current unavailability of basic telecommunications services....”⁸ Substantial improvements in employment levels and economic conditions will improve subscribership. Adding a second ETC and substantially reducing the revenues of the incumbents without reducing their costs will neither improve subscribership nor economic conditions.

In this regard, the comments of the National Tribal Telecommunications Alliance (NTTA) are instructive. While NTTA’s comments focus on the role of tribal authorities, they note that a

⁶ 47 U.S.C. 214(e)(3). Even if there were no carrier willing to provide service, state jurisdiction is not entirely preempted. The section only provides authority for the FCC to designate a provider of interstate services, and assigns authority to the state commission to designate a provider of intrastate services. CTIA conveniently excised this jurisdictional limitation from its quotation of the statute. CTIA also refers in passing to Section 332, but does not explain what relevance it might have.

⁷ Project and Range at 3-9.

⁸ CITA at 7.

relevant issue is the economic impact of the introduction of a new ETC on the services provided on a reservation by an incumbent local exchange carrier. NTTA expresses concern that the Commission not establish a precedent of designating ETCs on tribal lands "without regard to their ability to meet future universal service requirements" and points to the needs for capability of meeting future demands for advanced services.⁹ Project and Range noted in their comments that WW's proposed universal service offering cannot provide Internet connections at speeds above 9.6 kbs nor can it be used in health care facilities.¹⁰

WW's Petition requests several waivers of the universal service rules which it claims, without any quantitative support, are necessary to its provision of service on the Reservation. U S West raises the valid point that this request for more support than the incumbents receive is effectively an admission that WW is a less efficient service provider, and it would not be in the public interest to support such a service provider in this situation.¹¹

CTIA also states its agreement with WW that the proposed service offering is not subject to state jurisdiction because it will be on the Crow Reservation. CTIA claims that Section 214(e)(6) was added to the Act as a result of alleged Congressional concerns that rates would increase on Indian Reservations generally as a result of loss of universal service support, because

⁹ NTTA at 4.

¹⁰ Project and Range at 28.

¹¹ U S West at 7. *See also*, Bell South at 2; Rural Telephone Coalition at 6.

carriers serving reservations were not believed to be subject to state jurisdiction .¹²

Even a casual reading of the legislative history reveals that such an interpretation is a complete distortion of a very specific discussion. Project's and Range's comments demonstrated that the Congressional concern about local service rate increases on reservations was solely related to those reservations served by tribally owned carriers, because such carriers were recognized as not being subject to state jurisdiction.¹³ The legislation would never have passed, especially under the unanimous consent rules, if any member of Congress thought that it would have replaced the existing jurisdiction exercised by state commissions over *non-tribal* carriers with FCC jurisdiction. CTIA has not remedied WW's failure to demonstrate FCC jurisdiction, nor has it explored the consequences of a conclusion that all state regulation, including ETC designations on all reservations nationwide, would be similarly invalid.

CTIA also suggests that the Commission somehow obtains authority to grant ETC status because of the alleged need for universal service support for wireless service in high cost areas.¹⁴ CTIA adds nothing to the record to support its claim that such service is otherwise not economic nor does it provide any legal basis for the Commission to confer jurisdiction on itself in order to

¹² CTIA at 5.

¹³ Project and Range at 11-12 (quoting Senator McCain: "Typically, States also have no jurisdiction over tribally owned common carriers....").

¹⁴ CTIA at 7.

fulfill its policy goals. Any argument for preemption of state regulation must, at a minimum, set forth explicit FCC authority and show that exercise of state jurisdiction will thwart an important national objective. Neither CTIA nor WW have even hinted at how consideration of ETC designation by the Montana PSC would meet that test.

In conclusion, the record demonstrates that:

- (1) adequate service is available on the Crow Reservation,
- (2) the low level of subscribership (albeit substantially higher than claimed by WW) is a result of severe adverse economic conditions,
- (3) there is no legal basis for the Commission to exercise jurisdiction over the petition,
- (4) the Public Interest would not be served by designation of a second ETC in the service areas of the two Rural Telephone Companies, and
- (5) the requested waivers are unjustified and would not be competitively neutral..

Accordingly, the WW petition should be denied.

Respectfully submitted

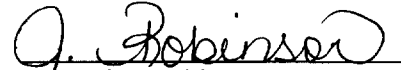
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CERTIFICATE OF SERVICE

I, Jessica Robinson, of Kraskin, Lesse & Cosson, LLP, 2120 L Street, NW, Suite 520, Washington, DC 20037, hereby certify that a copy of the foregoing "Reply Comments of Project Telephone Company, Inc. and Range Telephone Cooperative, Inc." was served this 27th day of October, 1999, by first class, U.S. Mail, postage prepaid to the following parties:


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